



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AND THE

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

Combe Fill South Landfill Superfund Site,
Chester and Washington Townships,
New Jersey

ADMINISTRATIVE
AGREEMENT UNDER
CERCLA Sections 104 and 107,
42 U.S.C. Sec. 9604, 9607

ADMINISTRATIVE AGREEMENT

Based on the information available to the undersigned Parties on the effective date of this Administrative Agreement (the "Agreement"), with respect to the Combe Fill South Landfill Superfund Site, Chester and Washington Townships, New Jersey (the "Site"), the Parties agree as follows:

PARTIES

1. The Parties to this Agreement are the United States Environmental Protection Agency ("EPA") and the New Jersey Department of Environmental Protection ("NJDEP"). The terms of this Agreement shall apply to and be binding upon EPA and NJDEP, and their employees, contractors, agents, successors, assigns and authorized representatives. The Parties shall notify their agents, employees and response action contractors for the Site of the existence of this Agreement until its termination. Nothing herein shall be construed as an agreement to indemnify any person.

JURISDICTION

2. The Parties enter into this Agreement pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Sections 9604 and 9607, and Executive Order 12580, as amended.

PURPOSE

3. The purpose of this Agreement is to set forth the rights and responsibilities of the Parties relating to the disposition and use of certain funds, including an annuity to fund future work at the Site, recovered in settlement of cost-recovery litigation for costs expended and to be expended in connection with the Site, *U.S. v. Beckman Coulter, Inc. et al.*, Civil Action No. 98-CV-4812 (WHW) and *NJDEP v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW)(consolidated).

FINDINGS OF FACT AND DETERMINATIONS

4. Settlement of the above-referenced litigation will be embodied in a Consent Decree (the "Decree") lodged on January 6, 2009 and, following a public comment period, if found to be fair, reasonable and in the public interest, to be entered by the District Court for the District of New Jersey in the above-captioned case.

5. Under the Decree, the United States, on behalf of EPA, and NJDEP and the Administrator of the New Jersey Spill Compensation Fund ("State Plaintiffs") have accepted \$69 million in reimbursement of Past Costs, plus interest, to be divided between them in accordance with an agreed-upon percentage basis reflecting the ratio of past costs incurred, respectively, by each agency, as specified in Paragraph 12, below.

6. Under the Decree, the United States, on behalf of EPA, and the State Plaintiffs have agreed to resolve claims for Future Response Costs (as defined in the Decree) through the purchase by the settling parties of an Annuity contract (hereinafter, the "Annuity") in the amount of \$27 million, to be paid to NJDEP in equal installments of \$900,000 per year for 30 years.

7. Prior recoveries in the above-captioned litigation, under a "de minimis" settlement and a settlement with certain past owner-operators of the Site (collectively, the "Prior Settlements"), which total \$16,342,154.07, were previously paid to EPA and the State Plaintiffs in the following approximate proportion: 90% to EPA and 10% to the State Plaintiffs, subject to a final accounting based upon the percentage basis described in Paragraphs 5 and 12.

8. EPA and NJDEP have entered into a Cooperative Agreement (V002555-84), as amended (the "Cooperative Agreement") for the Site, under which NJDEP has to date assumed the lead agency role.

9. Under Section 104 of CERCLA, 42 U.S.C. Section 9604, and 40 C.F.R. Section 300.515, EPA has the option to assume the lead agency role at the Site with regard to performance of the Second Operable Unit (OU 2) Remedial Investigation and Feasibility Study (RI/FS), construction of the OU 2 selected remedy, and long-term remedial action (LTRA), if required, for the OU 2 remedy (collectively, the "OU 2 Remedial Action").

10. This Agreement does not provide for CERCLA funding or cost-sharing for the OU2 Remedial Action and is not a "cooperative agreement" within the meaning of Section 104(d) of CERCLA, 42 U.S.C. Sec. 9620(d).

11. NJDEP holds a lien on the Combe Fill South Landfill property, as defined in the Consent Decree, pursuant to the New Jersey Spill Compensation Act, N.J.S.A. 58:10-23.11 f.f, for unreimbursed cleanup costs paid from the New Jersey Spill Compensation Fund, and EPA has filed notice of a CERCLA lien pursuant to CERCLA Section 107(l), on the following Site property: Block 17, Lot 7 on the Tax Map of Chester Township and Block 37, Lots 15, 16, 16.01

and 16.03 on the Tax Map of Washington Township, being a portion of that property conveyed to Combe Fill Corporation from Chester Hills, Inc. by deed dated September 15th, 1978, recorded in the Deed Book of Morris County, Book 2474, page 375.

AGREEMENT

READJUSTMENT OF PRIOR SETTLEMENTS

12. Amounts recovered under the Decree and in prior settlements from the private defendants and settling federal agencies in reimbursement of Past Costs, as defined in the Decree, shall be divided between EPA and NJDEP in the following proportion: 81.5% to EPA and 18.5% to NJDEP.

13. In order to readjust the amounts recovered in the Prior Settlements to reflect the 81.5%/18.5% division of Past Costs, above, and consistent with Paragraph 4(f) of the Decree, within 30 days of entry of the Decree EPA shall cause the amount of \$1,389,994.53 to be transferred to NJDEP, in partial reimbursement of NJDEP Past Costs incurred in connection with the Site.

ANNUITY-SHARING WHILE NJDEP REMAINS LEAD AGENCY

14. In consideration of the fact that the Annuity described in Paragraph 6, above, shall be paid to NJDEP, as of the date of entry of the Decree by the District Court, notwithstanding the terms of the Cooperative Agreement and except as provided in this Agreement, for so long as NJDEP remains the lead agency for both Operable Units at the Site, the Site shall not be eligible for EPA matching funds or other CERCLA reimbursement to NJDEP. Within 6 months of entry of the Decree, NJDEP shall: (a) provide to EPA a final written accounting in the form of a NJDEP, Division of Remediation Support-certified cost package of all case management, Department of Law, and invoice costs incurred in connection with the Site drawn from the Spill Compensation Fund, Hazardous Discharge Cleanup Fund, or other funding source; and (b) submit to EPA a final Financial Status Report (FSR) in accordance with the requirements of the Cooperative Agreement. Except as expressly provided under this Agreement, nothing herein shall be construed to alter or affect the Cooperative Agreement. The status of the Cooperative Agreement shall have no effect upon EPA's obligation to pay NJDEP pursuant to Paragraph 13.

15. EPA and the State Plaintiffs agree that after the 30-year period for disbursement of the Annuity has expired, provided that NJDEP remains in the lead agency role for both Operable Units at the Site, and further provided that NJDEP will not incur any subsequent response costs for the Site as such costs are defined in the Decree, any Annuity funds and accrued interest on those amounts obtained by NJDEP pursuant to the Decree which have not been expended for response costs incurred subsequent to June 9, 2006, shall be divided between EPA and the State Plaintiffs, in reimbursement of response costs and interest thereon incurred in connection with the Site, in the following proportion: 81.5% to EPA and 18.5% to the State Plaintiffs. Payment

of all amounts due to EPA under this Paragraph shall be made, in accordance with directions provided by EPA, within 90 days following the one-year anniversary of the date of receipt of the final Annuity payment pursuant to the Decree, as follows: 1) on the one-year anniversary date of receipt of the final Annuity payment, NJDEP shall provide a written accounting of all Annuity funds expended or applied to response costs by NJDEP in the manner specified in Subparagraph 14(a) of this Agreement and a statement of the amount of any unspent Annuity Funds and accrued interest; 2) no later than 30 days following receipt of this accounting, EPA shall forward to NJDEP an invoice for the amount of these unspent funds to be paid to EPA in accordance with this paragraph; and 3) no later than 60 days from the receipt of this invoice, NJDEP (or the state Department of Treasury) will submit to EPA payment for its share of these unspent Annuity Funds. In the event that, prior to expiration of the 30-year period, above, a determination is made by NJDEP, as lead agency for the Site, with the concurrence of EPA, that no further response costs need to be incurred for the Site, including for operation and maintenance (O&M), 81.5% of any remaining unspent Annuity funds, including accrued interest, shall be paid to EPA within 60 days of receipt from EPA of an invoice for the amount due to be paid EPA, and thereafter 81.5% of each Annuity payment (after deduction of any amounts applied to response costs incurred prior to such determination) shall be paid to EPA within 60 days of NJDEP's receipt of an invoice from EPA for the amount due EPA pursuant to this Paragraph. Within one week of its receipt of each Annuity payment, NJDEP will notify EPA of its receipt of each such payment so that EPA can submit the required invoice as soon as practicable.

16. If, subsequent to the one-year anniversary of the date of the receipt of the final Annuity payment, NJDEP will continue to incur response costs for the Site as those costs are defined in the Decree, and the total amount of those response costs will exceed the amount of any unspent Annuity funds held by NJDEP, NJDEP may retain any unspent Annuity funds and apply them to subsequent response costs for the Site. No later than the one-year anniversary date of the receipt of the final Annuity payment, NJDEP will notify EPA writing that it will incur subsequent response costs as described above and will provide a written accounting all Annuity funds expended as provided in Paragraph 15 as well as a written description and estimate of future subsequent response costs to be incurred and the time period over which these costs will be incurred.

ANNUITY-SHARING IF EPA ASSUMES LEAD ROLE FOR OU 2

17. In the event that, prior to expiration of the 30-year period for disbursement of the Annuity, EPA gives written notice to NJDEP that EPA intends to assume the lead agency role with regard to completion of the OU 2 Remedial Action, within 60 days of such notice NJDEP shall prepare and provide to EPA a written accounting of all Site-related response costs incurred by NJDEP between June 9, 2006 and the date of such notice (hereinafter the "Interim Costs"), including all Interim Costs to which NJDEP has applied any Annuity funds, in the manner prescribed by Subparagraph 14(a), above. NJDEP shall thereafter apply 100% of each Annuity payment to reimbursement of Interim Costs until such time as those costs are fully reimbursed.

18. At such time as NJDEP has fully reimbursed its Interim Costs from Annuity payments, any Annuity amounts not so applied shall be placed in an interest-bearing NJDEP special account, and NJDEP shall notify EPA in writing within 30 days of such reimbursement that the Interim Costs have been fully reimbursed with an accounting of all amounts reimbursed and remaining in the special account. No funds shall be drawn from the special account except as provided in Paragraph 19, below.

19. Regardless of whether or not the OU 2 Remedial Action involves treatment or restoration of ground or surface water, within two years of the date the OU 2 selected remedy is determined to be operational and functional within the meaning of 40 C.F.R. Sec. 300.435(f), or within 30 days of the date of NJDEP notice that the Interim Costs have been fully reimbursed under Paragraph 18, above, whichever is later, EPA and NJDEP shall confer and agree in writing upon an equitable percentage share of all future Annuity payments, as well as any funds in the NJDEP special account, in proportion to: (a) the amount of documented unreimbursed Site costs incurred by each agency, respectively, since June 9, 2006; and (b) future cost projections for each agency, respectively, based upon documented past First Operable Unit (OU 1) O&M costs and past OU 2 LTRA or O&M costs, as appropriate. Projected future costs shall be limited to 30 years from the ROD date for each Operable Unit or the date of expiration of the Annuity, whichever comes first. Within 60 days of receipt of an invoice from EPA pursuant to, and in accordance with such written agreement, NJDEP shall transfer EPA's percentage share of any amounts in the NJDEP special account to EPA. Thereafter, NJDEP shall pay to EPA its percentage share of each subsequent Annuity payment within 60 days of receipt of an invoice from EPA for the amount of the payment due EPA. NJDEP shall notify EPA of its receipt of each Annuity payment within one week of its receipt. Such payments to EPA by NJDEP shall continue for the life of the Annuity regardless of whether response actions continue to be taken at the Site. Any Annuity amounts under this paragraph not spent in connection with response actions at the Site shall be applied to reimbursement of past Site costs by each agency, respectively.

SHARING OF LIEN PROCEEDS

20. The Parties agree that any funds obtained by either Party through operation of NJDEP Spill Fund or CERCLA liens attaching to any portion of the Site shall be divided between them in the following proportion, notwithstanding the asserted value of such liens: 81.5% to EPA and 18.5% to NJDEP. Payments to effectuate this Paragraph shall be made within 60 days of receipt by either Party of the proceeds of any such liens; except that, in the event that the lien recovery is paid to NJDEP, NJDEP shall immediately notify EPA of its receipt of the payment for the lien recovery so that EPA may forward to NJDEP an invoice for the amount due EPA pursuant to this paragraph, and NJDEP shall arrange for the payment to be made to EPA no later than 60 days following receipt of the invoice from EPA.

ANNUAL REPORTING

21. NJDEP shall provide a copy of each annual report submitted to the Defense Groups consistent with Subparagraph 10(e) of the Decree ("Annual Reporting") to EPA, accounting for any expenditures relating to the Site, as well as a non-binding projection of activities to be conducted for the next twelve-month period. A copy of each such annual report shall be sent to:

**Chief, New Jersey Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency - Region II
290 Broadway - 17th Floor
New York, New York 10007
Attn: Combe Fill South Attorney**

**Chief, New Jersey Remediation Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency - Region II
290 Broadway - 19th Floor
New York, New York 10007
Attn: Combe Fill South Remedial Project Manager**

**Regional Comptroller
Financial Management Branch
Office of Policy and Management
290 Broadway - 22nd Floor
New York, New York 10007**

NJDEP shall also make available to EPA on request documents, reports, information and data in connection with the Site as well as invoices and other information relating to payment for Response Costs and other services rendered or as may otherwise be required to confirm application of Annuity payments in connection with the Site (whether all of the same shall be in written or electronic form)

22. In the event that EPA assumes the lead agency role for the OU 2 Remedial Action at the Site, for so long as EPA remains in that role EPA shall provide NJDEP an accounting of its Site response costs, as well as a non-binding projection of activities to be conducted for the next 12-month period, not later than 30 days prior to the deadline for providing Annual Reports under Subparagraph 10(e) of the Consent Decree. This paragraph shall not relieve NJDEP of its reporting requirements under the Consent Decree. Each report, and any attachments thereto, shall be sent to:

Edward Putnam, Assistant Director
Publicly Funded Remediation Element
New Jersey Department of Environmental Protection
P.O. Box 028
401 E. State Street
Trenton, NJ 08625

TERMINATION OF AGREEMENT

23. Provided that the Decree is entered by the District Court, this Agreement may only be terminated by mutual agreement of the Parties following expiration of the 30-year period for receipt of the Annuity described in Paragraph 6, above. This Agreement may be modified only by mutual agreement of the Parties.

EXECUTION OF DOCUMENT:

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement, and to legally bind such Party to it:

IT IS SO AGREED:

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date

4/7/09


WALTER MUGDAN
DIRECTOR

Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

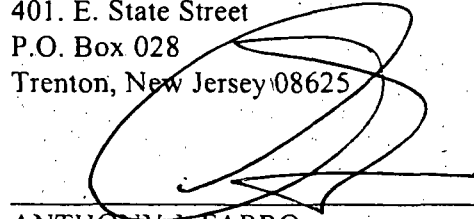
FOR THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

4/1/09
Date



IRENE KROPP
ASSISTANT COMMISSIONER
Site Remediation
401. E. State Street
P.O. Box 028
Trenton, New Jersey 08625

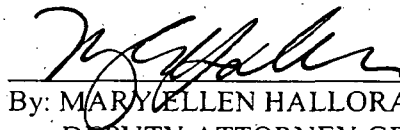
4/1/09
Date



ANTHONY J. FARRO
ADMINISTRATOR
New Jersey Spill Compensation Fund

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

4/1/09
Date



By: MARY ELLEN HALLORAN
DEPUTY ATTORNEY GENERAL
New Jersey Division of Law
P.O. Box 093
25 Market Street
Trenton, New Jersey 08625